

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Burrell Allen and Helen Allen as Trustees of the Allen Living Trust, Claimant v. RBC Dain Rauscher Inc. and Robert L. Posner, Respondents

Case Number: 05-03363

Hearing Site: Seattle, Washington

Nature of the Dispute: Customer v. Member and Associated Person

REPRESENTATION OF PARTIES

For Claimant:

Randy S. Cohn, Esq.
Nicholas P. Iavarone, Esq.
Simmons Cooper LLC
East Alton, Illinois

For Respondents:

Julie K. Thrall, Esq.
Lane Powell
Seattle, Washington

CASE INFORMATION

Statement of Claim filed: June 30, 2005

Claimants Burrell Allen and Helen Allen as Trustees of the Allen Living Trust's Joint Uniform Submission Agreement signed: June 29, 2005

Joint Statement of Answer and Motion to Dismiss filed by Respondents RBC Dain Rauscher Inc. and Robert L. Posner: August 25, 2005

Respondent RBC Dain Rauscher Inc.'s Uniform Submission Agreement signed: July 12, 2005

Respondent Robert L. Posner's Uniform Submission Agreement signed: August 25, 2005

CASE SUMMARY

Claimants asserted the following causes of action: breach of fiduciary duty, breach of contract, violation of the Securities Exchange Act, violation of the Washington Securities Act, negligence, and failure to supervise. The causes of action relate to Respondents' alleged unsuitable asset allocation and purchase of B shares of mutual funds for Claimants' account.

Unless specifically admitted in their Answer, Respondents denied the allegations of wrongdoing set forth in Claimants' Statement of Claim and asserted the following defenses: Claimants'

claims are barred by applicable statutes of limitations, Respondents did not know and could not have known of the existence of facts by reason of which liability is alleged to exist, failure to state a claim upon which relief can be granted, Claimants' damages must be reduced by their own percentage of fault or by the fault of others, waiver, estoppel, ratification, acquiescence, assumption of risk, laches, failure to mitigate, Claimants did not suffer damages due to the acts of Respondents, transactions recommended to Claimants and made for or on their behalf were suitable and in accordance with Claimants' stated objectives, risk tolerance, and financial condition, all risks inherent in the investments and strategies at issue were fully disclosed and/or known to Claimants, and any losses sustained by Claimants resulted from the volatility of the securities markets and not from any wrongdoing on the part of Respondents.

RELIEF REQUESTED

Claimants requested \$200,000.00 in economic damages, punitive damages in excess of \$600,000.00, pre-judgment interest, and costs, including attorney's fees.

Respondents requested dismissal of Claimants' Statement of Claim in its entirety, assessment of forum fees incurred in this matter to Claimants, and costs, including attorney's fees.

OTHER ISSUES CONSIDERED AND DECIDED

On August 25, 2005, Respondents filed an Answer and Motion to Dismiss. On November 10, 2005, Claimants filed a Response in Opposition to Respondents' Motion to Dismiss. On November 23, 2005, Respondents filed a Reply to Claimants' Opposition to Respondents' Motion to Dismiss. On December 21, 2005, the Panel and the parties participated in a telephonic pre-hearing conference during which the Panel heard oral argument from the parties regarding Respondents' Motion to Dismiss. After due deliberation, the Panel granted Respondents' motion on the grounds that Claimants' claims are barred by applicable statutes of limitation.

The parties agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

AWARD

After considering the pleadings, Respondents' Answer and Motion to Dismiss, Claimants' Response in Opposition to Respondents' Motion to Dismiss, Respondents' Reply to Claimants' Opposition to Respondents' Motion to Dismiss, and the parties' oral arguments, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Claimants' claims are dismissed with prejudice.
- 2) Claimants are liable to and shall pay Respondents the sum of \$13,944.60 in attorney's fees and \$905.61 in costs, pursuant to the Washington State Securities Act.

- 3) With the exception of paragraph 2, the parties shall bear their respective costs, including attorney's fees.
- 4) The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Robert L. Posner's registration records maintained by NASD's Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 04-16, Respondent Robert L. Posner must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Unless specifically waived in writing by the NASD, parties seeking judicial confirmation of an arbitration award containing expungement relief must name NASD as an additional party and serve NASD with all appropriate documents.

Pursuant to Rule 2130, the arbitration panel has made the following affirmative finding of fact:

The claim, allegation, or information is factually impossible or clearly erroneous.

- 5) Any and all relief not specifically addressed herein, including punitive damages, is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 375.00
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Member Fees

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, the member firm RBC Dain Rauscher Inc. is a party, and the following fees are assessed:

Member Surcharge	= \$ 2,250.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$ 4,000.00</u>
Total Member Fees	= \$ 7,000.00

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. The following forum fees are assessed:

Three (3) pre-hearing conference sessions with the Panel @ \$1,200.00/session = \$ 3,600.00
Pre-hearing conferences: October 26, 2005 1 session
 December 9, 2005 1 session
 December 22, 2005 1 session

Total Forum Fees = \$ 3,600.00

1. The Panel assessed \$1,800.00 of the forum fees jointly and severally to Claimants Burrell Allen and Helen Allen as Trustees of the Allen Living Trust.
2. The Panel assessed \$1,800.00 of the forum fees jointly and severally to Respondents RBC Dain Rauscher Inc. and Robert L. Posner.

Fee Summary

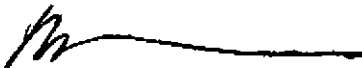
1. Claimants are charged jointly and severally with the following fees and costs:
 Initial Filing Fee = \$ 375.00
 Forum Fees = \$ 1,800.00
 Total Fees = \$ 2,175.00
 Less payments = \$(1,575.00)
 Balance Due NASD Dispute Resolution = \$ 600.00
2. Respondent RBC Dain Rauscher Inc. is charged solely with the following fees and costs:
 Member Fees = \$ 7,000.00
 Less payments = \$(7,000.00)
 Balance Due NASD Dispute Resolution = \$ 0.00
3. Respondents RBC Dain Rauscher and Robert L. Posner are charged jointly and severally with the following fees and costs:
 Forum Fees = \$ 1,800.00
 Less Payments by RBC Dain Rauscher Inc. = \$ (500.00)
 Balance Due NASD Dispute Resolution = \$ 1,300.00

All balances are payable to NASD Dispute Resolution and are due upon the receipt of the Award pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

<i>Richard L. Warner, Esq.</i>	-	<i>Public Arbitrator, Presiding Chair</i>
<i>Linda I. Thomas</i>	-	<i>Public Arbitrator</i>
<i>Bonny K. Riggs</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures



Richard L. Warner, Esq.
Chair, Public Arbitrator

12/28/05
Signature Date

Linda I. Thomas
Public Arbitrator

Signature Date

Bonny K. Riggs
Non-Public Arbitrator

Signature Date

12/29/05
Date of Service

NASD Dispute Resolution
Arbitration No. 05-03363
Award Page 5 of 5

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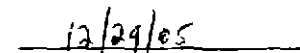
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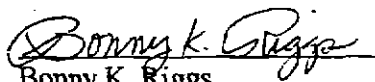
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